Supreme Court, U. S.
FILED
NOV 3 1980
MICHAEL RODAK, JR., CLERK

NO. 80-561

IN THE

Supreme Court of the United States

October Term, 1980

CONTROL DATA CORPORATION,

Petitioner,

V.

POTTER INSTRUMENT CO.,

Respondent.

BRIEF IN OPPOSITION

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NOW COMES the respondent, Potter Instrument Company, Inc. (PICO) and opposes the request by petitioner Control Data Corporation (CDC) for a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit. The Petition should not be granted because (a) there is no issue of imperative public importance as required by Supreme Court Rule 18 and (b) this case is not ripe for Supreme Court review.

There Is No Issue of Imperative Public Importance.

The issue in this case relates to the timeliness of filing of certain papers in the District Court as such filing affects appellate court jurisdiction. CDC argues that one of PICO's motions was "skeletal". PICO strenously disputes this characterization. However, even assuming arguendo that the motion was "skeletal", then whether a "skeletal" motion is sufficient is of no imperative public importance. CDC recognizes that under Supreme Court Rule 18 certiorari will be granted only in cases of imperative public importance. The question of finality of judgments is simply not comparable to the great issues accepted by the Court under Rule 18.

The case at bar is not one of "imperative public importance" as were gold clauses[1] in 1935, as was due process under the Fifth Amendment,[2] as were injunctions pending appeal,[3] as was irreparable harm from unconstitutional legislation,[4] as was habeas corpus in time of war,[5] as was government operation of mines,[6] as

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1. United States v. Bankers Trust Co., 294 US 240 (1935).

2. Railroad Retirement Board v. Alton, 295 US 330 (1935).

3. Rickert v. Fontenot, 297 US 110 (1936).

4. Carter v. Carter Coal, 298 US 238 (1936).

5. Ex parte Quirin, 317 US 1 (1942).

6. United States v. Mine Workers, 330 US 258 (1947).

was the power of the Secretary of Commerce to seize steel mills,[7] as was trial of an American by a Japanese court,[8] as were the powers of the Watergate special prosecutor.[9]

The Supreme Court should not issue a writ of certiorari since the issue presented is not of imperative public importance as required by Supreme Court Rule 18. However, even if the requirements of Rule 18 have been met, this case is not ripe for review.

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7. Youngstown Sheet & Tube v. Sawyer, 343 US 579 (1952).

8. Wilson v. Girard, 354 US 524 (1957).

9. United States v. Nixon, 418 US 683 (1974).

This Case Is Not Ripe for Supreme Court Review.

CDC is not the only party to Fourth Circuit Appeal No. 80-1428 pending below. There are three other parties. The undersigned has received no petition for a writ of certiorari from any party in the Fourth Circuit except CDC and presumes that none has been filed. PICO's reply brief in the Fourth Circuit was filed there on October 21, 1980. Thus all issues are currently ripe for consideration by the Court of Appeals. The Supreme Court should not consider CDC's petition at this time since other issues may arise from the appeal at the Fourth Circuit which should be considered concurrently with the issue urged here by CDC.

These cases were commenced as patent infringement actions against the four defendant-appellees in the

Court of Appeals. The patents in question relate to tape recorders that are employed with modern computers. Some understanding of the technology involved is necessary in order to adequately understand the issues. It would be a waste of judicial effort for the Justices of the United Supreme Court to consider this technological case twice. Insofar as CDC is concerned, the issues raised in the petition for writ of certiorari can be raised after a decision by the Court of Appeals.

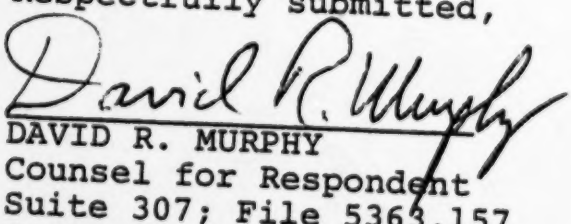
The Court of Appeals can promptly hear oral argument in this case and can promptly render its decision. Such a decision should facilitate Supreme Court review of the issues raised in the petition concurrently with all other issues considered by the Court of Appeals.

In any event, the Supreme Court should delay any decision on CDC's petition until the Fourth Circuit has rendered its decision.

Summary

In summary, the Supreme Court should not issue a writ of certiorari because (a) there is no issue of imperative public importance and (b) because this case is not ripe for Supreme Court review.

Respectfully submitted,



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